

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



December 30, 2004

TO PARTIES OF RECORD IN RULEMAKING 01-08-028

On November 20, 2003, Decision 04-02-059 was mailed to the parties without the concurrence of Commissioner Loretta M. Lynch. The dissent is now available, and is enclosed herewith.

/s/ Angela K. Minkin  
ANGELA K. MINKIN  
Chief, Administrative Law Judge

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Enclosure

## **Concurrence of Commissioner Lynch on D.04-02-059**

In D.04-02-059, the balance of \$67 million left pending from D.03-12-067 was awarded to Energy Efficiency programs as recommended by Energy Division. D.04-02-059 further awarded an additional \$4.47 million of unspent 2003 PG&E energy efficiency program funds to five programs in PG&E territory. I agree that the five additional PG&E programs which received excellent evaluations from Energy Division should be funded and I support this decision in order to move program implementation forward. However, I continue to be concerned with providing millions of dollars for statewide utility marketing programs that by Energy Division's own evaluation are not cost-effective in saving actual energy.

Decision 04-02-059 awards nearly \$35 million to three statewide utility programs that scored among the lowest of the nearly 400 proposals that had been submitted to the Commission for consideration. The December 2003 proposed decision also recommended funding the statewide utility programs in this same amount. In response, I wrote an alternate that awarded bridge funding while the Commission took a few weeks to review the evaluation process to better understand the criteria by which Energy Division had evaluated programs and made recommendations. That alternate was voted out by the Commission in D.03-12-060. In order to create an open and transparent funding process, my alternate directed Energy Division staff to provide evaluation information to each program proposer with proposals that did not receive at least 60 points in their primary criteria score; proposals that received

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over 60 points but had not been funded; proposals that were funded by the December decision, but at reduced levels; or proposals that requested a deadline extension or applied late.

Today's decision disperses the balance of the energy efficiency programs funds and seeks to clarify language from my alternate decision (D.03-12-060) that had raised questions about the Commission's evaluation process:

"This language may inadvertently suggest that the last step in staff's analysis was to rank and score program proposals. It may also imply inadvertently that we expected staff to score programs and then automatically reject any program proposals that scored below a threshold of 60 points. This procedure, however, is not what we anticipated in D.03-08-067 and would have been contrary to selection criteria adopted in D.03-08-067 for assembling the energy efficiency program portfolio."

Today's decision also states:

"If staff had created an artificial threshold score and relied solely on that score for choosing among programs, they would have deviated from Commission direction in D.03-08-067 and past Commission's decisions<sup>1</sup> that have assumed that staff and the Commission would apply judgment and discretion in order to advance the state's energy efficiency goals and avoid duplicative programs.

"D.03-12-060 did not create a minimum scoring criteria, but directed staff to re-evaluate certain programs to assure they would be consistent with the Commission's explicit objective to create a balanced energy efficiency portfolio for 2004 – 2005."

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<sup>1</sup> D.01-11-066 and D.02-05-046.

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Based on my review of the evaluation process, I cannot, agree with the conclusion that staff followed the criteria that was set to guide them in determining a short list of the most effective energy efficiency programs for California.

As directed by D.03-08-067, staff were to review proposals and recommend the design of the portfolio as follows: (1) evaluate each qualifying proposal using the primary and secondary criteria set forth in that decision; and (2) rank them in order of their scores on the primary criteria to create a short list of highest ranking proposals. This short list was then to be ranked based on their combined primary and secondary criteria scores and finally, a portfolio of programs was to be assembled from this smaller pool of proposals. From discussions with staff, I confirmed that they had chosen an arbitrary threshold primary score of 60 points in order to help them create a short list from which to form their recommended list of energy efficiency programs. Staff were then to go through the ranked list of proposals from top to bottom and consider each proposal's fit into the portfolio. In assembling their recommendations they came up with a list of many strong programs, but also included two of the lowest scoring programs submitted, in lieu of some of the highest scoring programs.

Despite the low scores, staff recommended statewide utility marketing and information programs for purposes of continuity and because they directly supported other utility savings and rebate programs that did not have integrated marketing programs of their own. In an effort to assess fully the merits of the statewide programs, my review found these marketing programs to be duplicative, have inflated budgets, and

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provide no clear demonstration of how they created actual energy savings results for their partner utility programs. I concluded that energy efficiency dollars would be better spent on other program proposals that had continuity, demonstrated ability to save actual energy, and were highly evaluated by staff. Additionally, because the utilities have access to more than \$250 million in additional energy efficiency procurement funds, they could choose to fund additional marketing costs if they believed the programs were truly worthwhile. The utilities' argument that marketing and information programs create awareness of energy efficiency opportunities is insufficient as a reason to fund those programs. Instead, we must be confident that they can propel that awareness into customer action. Thus, the utilities need to clearly demonstrate the effectiveness of all marketing dollars spent.

In D.03-12-060, the Commission created a specific, prioritized criteria to evaluate energy efficiency programs in order to ensure the most effective, innovative portfolio possible for California. The setting of an arbitrary 60-point cut-off allowed staff to winnow down proposals to create a short list as set by the D.03-08-067 criteria. And while the evaluation process should take into account staff's experience and expertise in order to create a balanced portfolio that does not necessarily rely on quantitative analysis, this Commission should utilize such a qualitative approach to fund programs that are innovative or serve a unique need, not to fund those that are the most expensive for the least result. Accordingly, I cannot agree with the majority's specific conclusion that determines there was no problem with the evaluation process used by

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Energy Division to establish their list of recommendations for 2004-05 energy efficiency program funding. Thus I file this concurrence.

The Commission went to great lengths to outline the criteria in D.03-08-067 so that all interested parties would understand how the energy efficiency proposal process operates and how to participate in that process. The use of more qualitative methods to choose programs, while potentially effective, can also work at cross purposes to alienate program participants. In order to encourage public participation in the proposal process and to promote understanding of how the Commission defines high-performing energy efficiency programs, it is especially critical that the evaluation process is consistent and transparent. It is this sort of communication process that will set the stage for the highest caliber energy efficiency programs that will ultimately benefit the state's energy goals as well as California ratepayers.

In this regard, going forward, it is essential that the next phase of energy efficiency administration that will be implemented in 2005 not only fosters an atmosphere of openness and communication, but that the programs selected to implement energy efficiency objectives must be accountable to the goal of cost-effectiveness in achieving energy savings. To that end, like third party implementers, utility programs must contain integrated marketing that can both promote their success as well as measure it.

Therefore, I concur with this decision.

Dated November 13, 2003, at San Francisco, California.

/s/ Loretta M. Lynch

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Loretta M. Lynch  
Commissioner

## CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties of which an electronic mail address has been provided; this day served a true copy of the original attached Concurrence of Commissioner Lynch on all parties of record for proceeding R.01-08-028 or their attorneys of record.

Dated December 30, 2004, at San Francisco, California.

/s/ Ernesto Melendez

Ernesto Melendez

## N O T I C E

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